

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**

7 N4D, LLC,) Case No. 13-CV-2656-BEN-NLS
8)
9 Plaintiff,) **ORDER GRANTING JOINT**
10 v.) **MOTION FOR ENTRY OF**
11 LEGEND3D, INC. f/k/a) **STIPULATED PROTECTIVE**
12 LEGEND FILMS, INC., et al.,) **ORDER**
13 Defendants.) **(Dkt. No. 38.)**
14)
15)

16 The Court having read the parties' joint motion for the entry of a protective
17 order (dkt. no. 38), finding no objection and good cause appearing,

18 **IT IS HEREBY ORDERED** that this motion is **GRANTED**, and the
19 following protective order is entered:

20 1. The email dated November 4, 2010, from Scott Mautner, Esq., General
21 Counsel for Symphony 3D, LLC to Anthony Balakian, Chad Aaron, Lance Hilton,
22 and Marc Goldman, copied to Alan U. Schwartz, Esq., George M. Belfield, Esq.,
23 and Jack McBride, Esq., hereafter "the Mautner email," is a privileged
24 communication.

25 2. The Mautner email was used in documents filed with this court, not
26 under seal but accessible by the public, without counsel for Passmore first notifying
27 N4D's counsel of their intent to do so.

28 3. Counsel for Passmore has since notified counsel for N4D as follows:

1 The email in question was produced by N4D's counsel in the Georgia case.
 2 In response to Passmore Lab's request for production of documents, N4D,
 3 through its counsel, produced over 125,000 documents, including emails, in
 4 electronic form at one time. The amount of documentation produced was so
 5 voluminous that a computer program had to be created to do keyword
 6 searches for relevant documents. We are unaware of any other privileged
 7 documents contained in that production. I have satisfactorily described the
 8 circumstances of the origins of the email and my knowledge of whether any
 9 other privileged documents exist. The Federal Rules require no more. If you
 10 wish to delve into greater detail, I would recommend contacting your client's
 11 past and current counsel in the Georgia litigation, since it was they who were
 12 responsible for allowing the document to be produced in the first place.

13 4. The Mautner email, as previously produced by N4D in the Georgia
 14 case shall be sequestered by Passmore's counsel for the duration of all litigation
 15 pending between Plaintiff and Passmore as of the date of the Protective Order,
 16 including this case; *Bird Rock Multimedia, Inc. v. 3DH Communications, Inc.*, San
 17 Diego Superior Court No. 37-2009-00100935; *Bird Rock Multimedia, Inc., et al. v.*
 18 *N4D*, San Diego Superior Court No. 37-2010-00103118-CU-MC-CTL; and *N4D,*
 19 *Inc. v. Gregory Passmore a/k/a Greg Passmore, et al.*, Gwinnett County (Georgia)
 20 Superior Court No. 10-A-11197-7.

21 5. No party shall use or refer to the Mautner email in any form, whether in
 22 pleadings or other documents filed with the court, as discovery, as substantive
 23 evidence, as impeachment material, or for purposes of witnesses' refreshing of
 24 memory, in any pending litigation between the parties, including this case, the cases
 25 described in Paragraph 4 above, and *N4D, LLC v. Legend3D, Inc.*, San Diego
 26 Superior Court No. 37-2012-00088480-CU-NP-CTL.

27 6. The office of Passmore's counsel represents, based on information and
 28 belief, that it is unaware of any other privileged documents inadvertently produced
 by N4D in its responses to Passmore's requests for production in *N4D, Inc. v.*
Gregory Passmore a/k/a Greg Passmore, et al., Gwinnett County (Georgia)
 Superior Court No. 10-A-11197-7, but it has not performed any further search to

1 verify the non-existence of any other privileged documents in the production of
2 documents made by N4D.

3 7. Without admitting that privileged documents other than the Mautner
4 email were inadvertently produced by N4D, LLC, to the extent that privileged
5 documents may exist in the previous document production made by N4D in *N4D,*
6 *Inc. v. Gregory Passmore a/k/a Greg Passmore, et al.*, Gwinnett County (Georgia)
7 Superior Court No. 10-A-11197-7, Passmore and Legend agree to refrain from using
8 or referring to such documents in any form, whether in pleadings or other
9 documents filed with the court, as discovery, as substantive evidence, as
10 impeachment material, or for purposes of witnesses' refreshing of memory, in any
11 pending litigation between N4D and Passmore or Legend, including this case, the
12 cases described in Paragraph 4 above, and *N4D, LLC v. Legend3D, Inc.*, San Diego
13 Superior Court No. 37-2012-00088480-CU-NP-CTL, with such refraining to include
14 the withdrawal of all previously-filed documents containing or referring to the
15 Mautner email.

16 8. The office of Legend's counsel represents that it has not received any
17 privileged documents, other than the Mautner email, that were inadvertently
18 produced by N4D in its responses to Passmore's requests for production in *N4D,*
19 *Inc. v. Gregory Passmore a/k/a Greg Passmore, et al.*, Gwinnett County (Georgia)
20 Superior Court No. 10-A-11197-7.

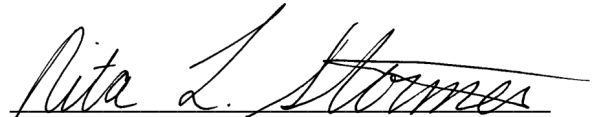
21 9. Because the office of Passmore's counsel claims that immediate
22 destruction is impossible, at the close of all pending litigation between N4D and
23 Passmore, including this case and the cases described in Paragraph 4 above,
24 Passmore will destroy all copies of the Mautner email and any other privileged
25 documents in its possession that may have been inadvertently produced by N4D in
26 its responses to Passmore's requests for production in *N4D, Inc. v. Gregory*
27 *Passmore a/k/a Greg Passmore, et al.*, Gwinnett County (Georgia) Superior Court
28 No. 10-A-11197-7, to the extent that any such documents exist.

1 10. At the close of all pending litigation between N4D and Legend, Legend
2 will destroy all copies of the Mautner email.

3 11. This stipulation and Protective Order shall apply only to the use of the
4 Mautner email and any other assertedly privileged documents inadvertently
5 produced by N4D in *N4D, Inc. v. Gregory Passmore a/k/a Greg Passmore, et al.*,
6 Gwinnett County (Georgia) Superior Court No. 10-A-11197-7, to the extent that any
7 such documents exist. This stipulation and Protective Order shall not apply to any
8 subsequent production by N4D of any privileged documents, including the Mautner
9 email, in this action or in the case of *N4D, LLC v. Legend3D, Inc.*, San Diego
10 Superior Court No. 37-2012-00088480-CU-NP-CTL.

11 **IT IS SO ORDERED.**

12
13 Date: May 14, 2014

14 
15 The Honorable Nita L. Stormes
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25
26
27
28